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ENVIRONMENTAL REGULATION

DIVISION OF ENVIRONMENTAL SAFETY AND HEALTH

OFFICE OF POLLUTION PREVENTION AND RIGHT TO KNOW

Worker and Community Right to Know Regulations

Proposed Amendments

N.J.A.C. 7:1G- 1.2

Authorized by :

Bradley M. Campbell, Commissioner,
Department of Environmental Protection.

Authority:

N.J.S.A. 13:1D-138 et seq., 34:5A-1 et seq.,
13:1D-9, 13:1B-3, and 26:2C-1 et seq.

Calendar Reference: See summary below for explanation of exception to calendar requirement.

DEP Docket Number: 34-05-09/521

Proposal Number: PRN_____

Submit written comments by (60 days after publication) to:

Leslie W. Ledogar, Esq.

Attention: DEP Docket #

Office of Legal Affairs

New Jersey Department of Environmental Protection

401 East State Street

P.O. Box 402

Trenton, NJ 08625

The Department of Environmental Protection (Department) requests that commenters submit comments on disk or CD as well as on paper. Submission of a disk or CD is not a requirement. The Department prefers Microsoft Word 6.0 or above. Macintosh™ formats should not be used. Each comment should be identified by the applicable N.J.A.C. citation, with the commenter's name and affiliation following the comment.

Copies of this proposal can be viewed or downloaded electronically from the Department's website at <http://www.state/nj/us/dep/opppc>.

The agency proposal follows:

Summary

As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

The Department of Environmental Protection proposes to amend the definition of "Employer" contained in the Worker and Community Right to Know regulations at N.J.A.C. 7:1G-1.2

Pursuant to the Worker and Community Right to Know Act, the Department adopted regulations at N.J.A.C. 7:1G, which set forth a comprehensive program for the disclosure of

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information to the Department about hazardous substances in the workplace and the community and defined the universe subject to the requirements based on Standard Industrial Classification (SIC) codes. Subsequently, as a result of the 1993 North American Free Trade Agreement (NAFTA) with Canada and Mexico, the Federal Office of Management and Budget (OMB) replaced the SIC coding system with a new NAICS coding system. This conversion necessitated that the NAICS coding system be adopted by the Department to effectively implement the Community Right to Know program. Accordingly, New Jersey legislature enacted N.J.S.A. 13:1D-138 et seq., which directed the Department to adopt rules defining regulated employers by NAICS codes. The legislation directed the Department to maintain the generally equivalent universe of employers and facilities that had been to date covered by the SIC codes listed in the Community Right to Know Act and the Department's implementing rules at N.J.A.C. 7:1G.

As directed by the statute, the Department, by way of a special adoption and concurrent proposal, amended the definition of employer, in which it identified the universe of regulated entities subject to the Worker and Community Right to Know regulations by NAICS codes (see 36 N.J.R. 212(a) and 36 N.J.R. 4121(a)). However, subsequent to the adoption of the amended definition of "Employer," the Department became aware that four NAICS codes corresponding to previously regulated SIC codes had been omitted. Accordingly, the Department is proposing to add these four NAICS codes to the definition of "employer" to correct this omission.

The four NAICS codes that would be affected are as follows: (1) 488510, Freight Transportation Arrangement; (2) 488991, Packing and Crating; (3) 488999, All Other Support

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Activities for Transportation, Limited to pipeline terminals and stockyards for transportation; and

(4) 517211, Paging.

Social Impact

The purpose of the proposed amendments is to add NAICS codes to the CRTK program that were inadvertently omitted in the original conversion from SIC to NAICS codes. The amendments will not expand the regulated universe beyond that which was regulated under the SIC codes. Accordingly, the amendments are not anticipated to have either a positive or negative social impact.

Economic Impact

The purpose of the proposed amendments is to complete the conversion from SIC codes to NAICS codes in the CRTK program. The amendments will not expand the regulated universe beyond that which was regulated under the SIC codes. Accordingly, the amendments are not anticipated to have either a positive or negative economic impact.

Environmental Impact

The purpose of the proposed amendments is to complete the conversion from SIC codes to NAICS codes in the CRTK program. The amendments will not expand the regulated universe beyond that which was regulated under the SIC codes. Accordingly, the amendments are not anticipated to have either a positive or negative environmental impact.

Federal Standards Statement

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. (P.L.1995, c.65) require State agencies that adopt, readopt or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a Federal Standards Analysis. The proposed amendments do not exceed Federal standards. Rather, they complete the incorporation of the Federal industrial classification standards into N.J.A.C. 7:1G. Accordingly, no Federal Standards Analysis is required.

Jobs Impact

The purpose of the proposed amendments is to complete the conversion from SIC codes to NAICS codes in the CRTK program. The amendments will not expand the regulated universe beyond that which was regulated under the SIC codes. Accordingly, the implementation of these amendments is expected to have no impact on employment and jobs in New Jersey, including the generation or loss of jobs.

Agricultural Industry Impact

In accordance with N.J.S.A. 4:1C-10.3, the Right to Farm Act, the Department has reviewed this proposal and determined that it will have little or no impact upon the Agriculture Industry. The purpose of the proposed amendments is to complete the conversion from SIC codes to NAICS codes in the CRTK Regulations. The amendments will not expand the regulated universe beyond that which was regulated under the SIC codes. Accordingly, the amendments are not anticipated to have any impact on the agricultural industry.

Regulatory Flexibility Analysis

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52: 14B-16 et seq., the Department evaluated the effect of this proposed amendment on small business. The amendments will not expand the regulated universe beyond that which was regulated under the SIC codes. Any small businesses regulated under the CRTK program will continue to be regulated, but the amendments do not impose any additional requirements on those businesses. Accordingly, the Department has determined that no regulatory flexibility analysis is required.

Smart Growth Impact

Executive Order No. 4 (2002) requires State agencies that adopt, amend or repeal State regulations to include in the rulemaking document a Smart Growth Impact statement that describes the impact of the proposed rule on the achievement of smart growth and implementation of the State Development and Redevelopment Plan (State Plan). The proposed amendment does not relate to the State's land use and development policies in a way that would either encourage or discourage any development or redevelopment in this State contrary to the guiding principles of the State Plan. As a result, the Department does not expect this rulemaking to have an impact on the State's achievement of smart growth or implementation of the State Plan.

Full text of the proposal follows:

SUBCHAPTER 1 GENERAL PROVISIONS

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7:1G-1.2 Definitions

...

"Employer" means any person or corporation, regardless of whether he pays employees, in the State, engaged in business operations having the following United States North American Industry Classification System (NAICS) codes, dated and published in 2002 by the Executive Office of the President, Office of Management and Budget, ISBN 0-934213-87-9 (NTIS PB2002- 502024), subject to the specified exceptions and limitations:

Subsector Code or Industry Code	Description	Exceptions and/or Limitations
...
<u>488510</u>	<u>Freight Transportation Arrangement</u>	<u>No exceptions and/or limitations</u>
<u>488991</u>	<u>Packing and Crating</u>	<u>No exceptions and/or limitations</u>
<u>488999</u>	<u>All Other Support Activities for Transportation</u>	<u>Limited to pipeline terminals and stockyards for transportation</u>
...
<u>517211</u>	<u>Paging</u>	<u>No exceptions and/or limitations</u>
...